UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION

EXELON GENERATION COMPANY, LLC[1] Employer and	Case 4–RC–20940
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, ON BEHALF OF IBEW LOCAL UNION 614[2] Petitioner	

REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION

The Employer, Exelon Generation Company, is engaged in generating electricity at various power plants throughout the United States, including nuclear power plants at Peach Bottom Atomic Power Station in Delta, Pennsylvania (herein Peach Bottom) and Limerick Generating Station in Pottstown, Pennsylvania (herein Limerick). The Petitioner, IBEW on behalf of its Local 614, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit of the Employer's production and maintenance employees at the Peach Bottom and Limerick plants as well as at its Outage Services Group in Kennett Square, Pennsylvania. The parties agree as to the scope and composition of the unit, with the exception of two classifications: the Lead Technicians in the Maintenance Department and the Reactor Operators in the Operations Department.[3] Contrary to

[1] The Employer's name appears as amended at the hearing.

[2] The Petitioner's name appears as amended at the hearing.

[3] The parties stipulated to include all full-time Designers, HP Technicians, Instrument & Control (I&C) Technicians, Chemistry Technicians, Equipment Operators, Maintenance Technicians, Utility Technicians, Material Coordinators, Quality Verification Technicians, NDE Technicians and plant clericals at Limerick and at Peach Bottom. The stipulated plant clericals included in the unit who are employed at Limerick are: Chemistry: Administrative Clerk; Operations: Administrative Clerks; Radiation Protection: Administrative Clerk; Maintenance: Technical Clerk, Administrative Coordinator; Maintenance Planning: Administrative Coordinator; I&C: Administrative Coordinator; and Business Operations: Administrative Clerks. The stipulated plant clericals included in the unit who are employed at Peach Bottom are: Chemistry: Administrative Coordinator; Operations: Technical Clerk, Administrative Coordinator; Radiation Protection: Technical Clerk; Maintenance: Administrative Coordinator; Maintenance Planning: Administrative Coordinator; I&C: Administrative Coordinator; Business Operations: Technical Clerks.

the Petitioner, the Employer contends that the Lead Technicians and Reactor Operators are supervisors within the meaning of the Act because they have the authority to assign and responsibly direct employees using independent judgment. The Petitioner's proposed unit would consist of about 600 employees, while the Employer's proposed unit would exclude about 70 to 80 Lead Technicians and about 40 to 55 Reactor Operators.

A hearing officer of the Board held a hearing, and the parties filed briefs with me. I have considered the evidence and the arguments presented by the parties concerning the Employer's contention that the petitioned-for Lead Technicians and Reactor Operators are supervisors. As discussed below, I have concluded that the Lead Technicians assign and responsibly direct Technicians on their teams using independent judgment and therefore are supervisors within the meaning of the Act. However, I have concluded that the Petitioner has not established that the Employer's Reactor Operators assign and/or responsibly direct Equipment Operators or any other employees using independent judgment sufficient to make them supervisors within the meaning of the Act. Accordingly, I have included them in the unit.

To provide a context for my discussion, I will first present an overview of the Employer's operations. Then, I will review the factors that must be evaluated in determining whether the Lead Technicians and Reactor Operators are supervisors within the meaning of Section 2(11) of the Act. Finally, I will present the relevant facts and analysis as to each contested job classification.

I. OVERVIEW OF OPERATIONS

The Employer's Peach Bottom and Limerick power plants are similarly structured, and each contains a Maintenance Department and an Operations Department. The Lead Technicians work in the Maintenance Department at each plant and at Outage Services, while the Reactor Operators work in the Operations Department.

The parties stipulated to exclude all other Administrative Clerks, Administrative Coordinators, Senior Administrative Coordinators and Executive Coordinators as confidential and/or office clerical employees. They also agreed to exclude all employees in exempt pay classifications and all employees in the Security, Training, Regulatory Assurance, Nuclear Oversight, and Human Resources Departments.

The parties further stipulated with respect to employees regularly classified as Quality Verification Technicians who are working in Nuclear Oversight on a rotational basis and employees regularly classified as Maintenance Technicians, I&C Technicians, HP Technicians, Quality Verification Technicians and Designers who are assigned to a Planning position on a rotational basis, that their eligibility shall be based on their regular job classification at the time of the designated payroll period of eligibility and the date of the election.

The Petitioner indicated that it did not wish to proceed to an election if all Lead Technicians and Reactor Operators were found to be supervisors within the meaning of the Act. However, if one group is found to be supervisory and the other not, the Petitioner would reserve the right to proceed to an election in the unit found appropriate by the Regional Director.

Maintenance Department and Outage Services Group

The Maintenance Department is responsible for all corrective and preventative maintenance at both Peach Bottom and Limerick, and the Outage Services group provides maintenance services during refueling outages at Peach Bottom, Limerick, and the Employer's Three Mile Island (TMI) and Oyster Creek nuclear power plants. Every spring, there is an outage at Limerick at either Reactor 1 or Reactor 2, and every fall there is an outage at Peach Bottom at Unit 2 or Unit 3. Also each fall, there is an outage at TMI or Oyster Creek.

The Maintenance Department is divided into four areas at each plant: Mechanical/Electrical, Instrumentation and Control (I&C), Planning, and Maintenance Support. Mechanical/Electrical and I&C are the largest work groups. Each Maintenance team at Peach Bottom, Limerick, and Outage Services consists of one Supervisor, one to three Lead Maintenance Technicians (LMTs) or Lead I&C Technicians, and 10 to 15 Maintenance Technicians or Utility Technicians. LMTs and Lead I&C Technicians[4] comprise the disputed classification of Lead Technicians.

Mechanical/Electrical has seven teams at each plant organized according to their technical expertise or job skills. These teams perform day-shift work for eight hours per shift except during outages, when they work for 10 to 12 hours. There is also a "Fix it Now" (FIN) team at each plant comprised of Maintenance Technicians and LMTs which handles emergent work.

The I&C group at each plant has five teams, with each team responsible for work on different types of instrumentation. Utility Technicians have less training than Maintenance Technicians and generally perform a more limited scope of work and more testing. They have specialized knowledge of analog and digital electronics.

In Outage Services, Maintenance employees work in Reactor Services and Turbine Services. Reactor Services employees remove spent fuel from nuclear reactor vessels, send it to a containment area, and replace it with new fuel. Turbine Services employees perform maintenance on main reactor turbines, turbine generators, and auxiliary support systems, as well as reactor feed water and cooling pumps. In Outage Services, approximately three LMTs, eight Maintenance Technicians, and a Planner are primarily assigned to Limerick, and about two LMTs, six Maintenance Technicians, and one Planner are primarily assigned to Peach Bottom. Three LMTs, 21 Maintenance Technicians, and two Planners are primarily assigned to the Oyster Creek and TMI plants. When there is no work at their primary locations, these employees are all assigned elsewhere.

[4] Lead I&C Technicians are at times called Lead Instrumentation Technicians.

Operations Department

Operations activities are associated with the safe monitoring and operation of the nuclear reactors and related support systems. The Operations Department consists of subgroups covering Shift Operations, Operations Support/Services, and Reactor Engineering.[5]

In Shift Operations, Reactor Operators at each plant work on one of five shift teams. The shift team work consists of monitoring and manipulating equipment, responding to emergencies, and performing various tests. Each shift team is composed of a Shift Manager, two to five Shift Supervisors, four to five Reactor Operators, and nine to eleven Equipment Operators. Each team works a rotating schedule to assure 24-hour a day, 7-day-a-week coverage and follows a five-week rotation cycle with the fifth week spent in training.

In Operations Support/Services there are Work Control Supervisors,[6] Clearance Writers, and Planners. The Clearance Writers are Reactor Operators who usually volunteer to work in this position and are specifically trained to do this work.

The Reactor Operators work in the Control Room, which is divided into two sections, one for each reactor unit (Unit 1 and Unit 2). Two Reactor Operators, called Unit Reactor Operators (UROs), are assigned to each unit. A third Reactor Operator, the Plant Reactor Operator (PRO), is responsible for the reactors' common systems and is involved in completing the "people paper" by which employees receive their daily assignments. The Fourth Reactor Operator often backs up the other Reactor Operators, is available as a resource, and fills in where needed. The Reactor Operators on each team rotate through these four positions.

The Shift Manager and Shift Supervisors are all required to be licensed Senior Reactor Operators and are "exempt" employees who are paid pursuant to the Employer's Professional Salaried or Managerial Pay Plan (PSM scale), while the Reactor Operators and Equipment Operators are non-exempt and paid on a different hourly pay scale. Reactor Operators and Equipment Operators receive 15 minutes of overtime pay when they turn over their shifts to employees on the next shift.

Reactor Operators are not required to have more than a high school degree, but they are highly trained and skilled employees. Unlike Equipment Operators, Reactor Operators are licensed by the Nuclear Regulatory Commission. Many employees have progressed from Equipment Operator to Reactor Operator to Senior Reactor Operator over time and with additional training.

The Shift Manager on each team, who is located in an office adjacent to the Control Room, is responsible for the performance of his team and the safe operation of the plant during his shift. He must remain within a 10-minute walk of the Control Room at all times.[7]

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[5] In Reactor Engineering, there are engineers who provide technical oversight to Reactor Operators. The record does not indicate that there are any Reactor Operators in Reactor Engineering.

[6] The Work Control Supervisors are Senior Reactor Operators. The parties agree that they are supervisors within the meaning of the Act.

The Shift Supervisors rotate through the jobs of Control Room Supervisor, Work Control Supervisor, and Field Supervisor. The Control Room Supervisor, who sits in the center of the Control Room, supervises the Reactor Operators on the shift and is responsible for authorizing all testing, including surveillance testing and maintenance work on equipment affecting plant safety. When abnormal or unsafe conditions occur, the Control Room Supervisor is required to become involved to resolve the situation. The Reactor Operators debrief at the end of their shift with the Control Room Supervisor.

The Work Control Supervisor is responsible for implementing the daily work schedule, which includes the performance of pre-job briefings, assigning work, the coordination of clearances, and manpower and post-job critiques. He is expected to be aware of all surveillance and routine testing performed by the Equipment Operators. He works in an office within the Control Room complex but not on the main Control Room floor.

The Field Supervisor supervises all Reactor Operator and Equipment Operator activities in the plant. He reviews rounds sheets which document equipment readings taken by the Equipment Operators during their rounds. The Field Supervisor is responsible for the training, rewarding, and discipline of the Equipment Operators on the shift team and must monitor their radiation exposure. The Equipment Operators normally debrief with the Field Supervisor and brief the next shift of Equipment Operators.

II. FACTORS RELEVANT TO DETERMINING THE SUPERVISORY STATUS OF LEAD TECHNICIANS AND REACTOR OPERATORS

The burden of establishing supervisory status is on the party asserting that such status exists. *NLRB v. Kentucky River Community Care, Inc.*, 532 U.S. 706, 711 (2001). Section 2(11) of the Act sets forth a three-part test for determining whether an individual is a supervisor. Pursuant to this test, employees are statutory supervisors if: (1) they hold the authority to engage in any one of the 12 supervisory functions listed in Section 2(11); (2) their exercise of such authority is not of a merely routine or clerical nature but requires the use of independent judgment; and (3) their authority is held in the interest of the employer. See *NLRB v. Kentucky River Community Care, Inc.*, supra, 532 U.S. at 712-713; *NLRB v. Health Care & Retirement Corp. of America*, 511 U.S. 571, 573-574 (1994).

The statutory criteria for supervisory status set forth in Section 2(11) are read in the disjunctive, and possession of any one of the indicia listed is sufficient to make an individual a supervisor. See *Juniper Industries, Inc.*, 311 NLRB 109, 110 (1993). The Board analyzes each case in order to differentiate between the exercise of independent judgment and the giving of routine instructions, between effective recommendation and forceful suggestions, and between the appearance of supervision and supervision in fact. The exercise of some supervisory authority in a merely routine, clerical, or perfunctory manner does not confer supervisory status

[7] Although there are male and female employees in the disputed classifications and other relevant classifications, this Decision will use the masculine form for convenience.

on an employee. See *Juniper Industries*, supra at 110. The authority effectively to recommend an action means that the recommended action is taken without independent investigation by superiors, not simply that the recommendation ultimately is followed. See *Children's Farm Home*, 324 NLRB 61 (1997); *Hawaiian Telephone Co.*, 186 NLRB 1 (1970). The Board has an obligation not to construe the statutory language too broadly because the individual found to be a supervisor is denied the protection of the Act. *Azusa Ranch Market*, 321 NLRB 811, 812 (1996). Where the evidence is in conflict or otherwise inconclusive on particular indicia of supervisory authority, the Board will find that supervisory status has not been established, at least on the basis of those indicia. *Phelps Community Medical Center*, 295 NLRB 486, 490 (1989). The sporadic exercise of supervisory authority is not sufficient to transform an employee into a supervisor. See *Gaines Electric*, 309 NLRB 1077, 1078 (1992); *Ohio River Co.*, 303 NLRB 696, 714 (1991), enfd. 961 F.2d 1578 (6th Cir. 1992).

In *Kentucky River*, the Court decided, contrary to the Board, that RNs at a residential nursing care facility were supervisors within the meaning of the Act. In determining that the nurses were not supervisors, the Board had emphasized, inter alia, that while they directed the work of nurses' aides, this direction did not involve independent judgment because it was by virtue of the nurses' training and experience, not because of their connection with management. The Court acknowledged that the term "independent judgment" is ambiguous with respect to the *degree* of discretion required for supervisory status and recognized that it was "within the Board's discretion to determine, within reason, what scope of discretion qualifies." 532 U.S. at 713. The Court rejected the Board's analysis, however, because the Board erroneously excluded from the statutory definition of independent judgment, "ordinary professional or technical judgment in directing less-skilled employees to deliver services in accordance with employer-specified standards," even where the employees exercised a sufficient degree of discretion to otherwise warrant a supervisory finding. Id. In all other respects, the Court left intact the Board's traditional role in drawing the line between the performance of functions which are clerical and routine and assignment and direction that involve a sufficient element of discretion to confer supervisory status.[8] The Court did not hold that every exercise of professional or technical judgment in directing other employees is necessarily an exercise of independent judgment, but recognized that the Board could determine the degree of independent judgment necessary to meet the statutory threshold for supervisory status. Id. at 714. The Court also indicated that, "the degree of judgment that might ordinarily be required to conduct a particular task may be reduced below the statutory threshold by detailed orders and regulations issued by the employer. Id. at 713-714.

The Employer's Contentions

The Employer contends that its Lead Technicians and Reactor Operators are supervisors based on their asserted authority to assign and responsibly direct employees. The Employer does not contend, and there is no evidence, that Lead Technicians or Reactor Operators hire, fire, discipline, lay off, recall, or promote employees, effectively recommend such actions, or adjust grievances.

[8] The Court further suggested that the Board might, "offer a limiting interpretation of the supervisory function of responsible direction by distinguishing employees who direct the manner of others' performance of discrete tasks from employees who direct other employees." Id. at 720.

III. LEAD TECHNICIANS

A. Facts

Lead Technicians are responsible for leading teams of Maintenance Technicians in completing assigned tasks safely and within scheduled time limits, while adhering to work order requirements and procedures. Many Lead Technicians have risen from the ranks of Maintenance Technicians, and they typically earn about $3 or 10 percent more per hour than Maintenance Technicians, although they are on the same non-PSM (professional salaried or managerial) pay scale as the Technicians.

Planning and assigning work

Lead Technicians are involved in the advance planning of Technicians' work. Work management/planning teams create schedules for jobs 12 weeks before they are to be performed, and Lead Technicians attend meetings at various times during these 12 weeks. Some attend meetings on the twelfth week, fifth week, and third week before work is to be performed, along with Supervisors, the Work Week Manager, and in some cases the Maintenance Mechanical/Electrical Manager. Others attend on different weeks. I&C Lead Technicians testified that they attended meetings at Weeks 5 and 3 at Limerick and Weeks 5, 3, 2 and sometimes Week 1 at Peach Bottom.

The participants at the meetings review the schedules to determine whether the work can be performed as listed. Lead Technicians are consulted as to whether their teams have enough qualified employees to perform the work, whether there are enough hours scheduled for the work, and whether there are any scheduling conflicts with their teams. If there are problems with the scheduled work, the Lead Technicians coordinate with the Work Week Manager and other supervisors to resolve the problems so that the work can be performed most efficiently. Lead Technicians make sure that necessary parts have been ordered, proper clearances have been requested, and that any coordination needed with other groups has taken place. In addition to these duties, Lead Technicians who are involved in planning for outages go into the plants, ensure that routes are clear for large equipment and components to be moved during outages, and coordinate with work groups impacted by these movements. Their planning involves a consideration of the available resources, the order of the work, how long it will take, impact on other groups, and safety concerns. According to an I&C Supervisor at Peach Bottom, during outages Lead Technicians lay out the entire outage schedule for the team.

At some point in this planning process, Lead Technicians assign individual members of their teams to specific jobs based on their skills and qualifications and on-the-job training opportunities.[9] Lead Technicians take into account whether employees are designated as qualified to perform certain jobs, whether they are good workers, how well they work with other

[9] While a Limerick I&C Manager testified that Lead Technicians assign employees to specific jobs beginning five weeks before jobs are to be performed, a Peach Bottom LMT testified that he did not do so at the Week 5 and Week 3 work management meetings.

specific individuals, how experienced they are in performing particular jobs, and how efficient they are likely to be in performing certain jobs. They also take into account staffing issues, such as whether employees are leaving early that day, and in certain cases, the radiation exposure the employees are expected to receive from the job in relation to how much radiation exposure they had already received that week. The Lead Technicians finalize work assignments on a daily basis, taking into account all of the above factors, as well as any changes in assignments based on staffing changes such as call-outs and emergent work.

Unlike the other teams where there is long-term planning of work, the Fix it Now (FIN) team handles emergent work on a daily basis. The FIN team Lead Technician assigns members of his team to different tasks based on the employees' skills and availability and the priority of work assignments.

Various members of the I&C teams are subject matter experts in different areas with specific qualifications, and the Lead I&C Technicians are often guided by team members' expertise in making assignments.

Daily Activities

Lead Technicians often come to work about a half hour before their team reports to make sure the work is ready. When some Lead Technicians come into work early, they also leave early and only work an eight-hour shift. Most of the Lead Technicians have a telephone, computer, and cubicle or office near their respective Supervisors, where they perform their administrative duties.

Lead Technicians typically work on day shift for eight hours, but there are times when they rotate to 12-hour shifts to assure 24-hour coverage. During outages or shift work, when they arrive Lead Technicians speak with their counterparts coming off shift. They then discuss with Supervisors any plant changes, call-outs, safety issues, or other matters that might affect the planned work. The Lead Technicians make sure that the needed clearances have been requested, print out the "activities in progress" status sheets, put them in the "work packages" with the copies of the clearances, and finalize the work sheets. They make sure that the work packages contain the right paperwork, including any permits needed for confined spaces and fire protection impairments. They additionally ensure that any special tools or other needed resources to perform the work are present for their team members so that they may begin their work on time. While the Supervisor typically reviews work sheets prepared by the Lead Technicians and can make certain changes, most of the time the assignments made by the Lead Technicians are not changed.

Once the Technicians arrive, there is a meeting for all the teams' members, and then the Lead Technicians meet with each of the Technicians on their teams, tell them specifically what they will be doing that day, and give them their work packages.

Field Work

Lead Technicians spend varying amounts of time in the field performing work themselves as well as overseeing the work of their team members. The amount of time spent in each of these pursuits depends on the nature of the work, manpower availability, and whether or not the team is working during an outage.

According to the Director of Outage Services, the Lead Technicians in that group spend less than 10 percent of their time doing hands-on work, and according to the Manager of Turbine Services, Lead Technicians spend less than five percent of their time doing physical work during outages. At other times, they spend 40 percent of their time overseeing the work of the Technicians and 60 percent of their time in the office doing paperwork, such as checking the accuracy of work packages and making sure they are closed out correctly. Lead I&C Technicians may perform hands-on work along with I&C Technicians 25 to 30 percent of the time.

According to the Maintenance Support Manager at Peach Bottom, an LMT spends less than 50 to 60 percent of his time working with his hands depending on whether he has a full complement of employees, but the Lead Technician on the FIN team at Peach Bottom spends 90 percent of his time in the field personally working on equipment. A Lead I&C Technician and an LMT at Limerick both estimated that they spend about 50 percent of their time in the field performing the hands-on work of Technicians. An LMT at Peach Bottom testified, however, that for about half of his time spent working in the field, he is checking the work of his team, troubleshooting jobs, and directing different courses of action for his team members.[10]

Lead Technicians spend a varied number of hours per day in the field observing and coaching the members of their teams. According to a Lead I&C Technician at Limerick, his Supervisor relies on him to make judgments during the day regarding which Technician is most suited to perform a particular job. The Lead Technician also is responsible for making sure the Technicians' paperwork is complete. Before signing off on a surveillance test, the Lead Technician makes sure that the Technician signed off in a satisfactory manner, that the data has been entered into the table, and that the data is correct within the specific criteria.[11]

If the Lead Technician finds something askew on the surveillance test, it is his responsibility is to make sure the test is done correctly. Lead Technicians offer guidance on which routes to take regarding various jobs, and if a Technician has a question, he can contact his Lead Technician or the Supervisor of the team. If an I&C Technician team is having difficulty in the field and is delayed for 10 minutes, he must contact the Lead I&C Technician. If

[10] When Lead Technicians perform Technicians' work, according to the same LMT at Peach Bottom, if there are two Lead Technicians, one has his hours entered into the computer as administrative hours, while the other's hours are counted as "man hours," along with those of the Technicians on the team. According to an I&C Manager at Limerick, however, Lead I&C Technicians at Limerick, unlike the Technicians on their teams, are not entered into the computer and counted for manpower purposes in the work management process.

[11] According to the I&C Supervisor at Peach Bottom, Lead I&C Technicians do not sign off on surveillance tests.

the Lead I&C Technician cannot resolve the problem in 30 minutes, he calls the Supervisor for assistance, and in the absence of the Supervisor, he contacts the Work Week Manager directly. According to the I&C Manager at Limerick, 90 percent of I&C Technician work is performed in accordance with step-by-step procedures, but there are situations when a Technician confronts a situation not spelled out in the procedures. These situations occur during surveillance tests about three to four times per week and in the work order process about four times per week.

According to the Manager of Turbine Services, during outages a Lead Technician may run five to six small teams at any one time, and it is up to him to determine how many employees to assign to a particular job. For example, if he has five employees and only needs four on a job, he can assign the fifth employee to a different job. Also, if a team encounters an unexpected problem, the Lead Technician has discretion as to how to use his team to resolve it. For example, if a bolt is stuck on a turbine that the team is disassembling, the Lead Technician could send a Technician to get a welding outfit to heat the bolt, or could send another Technician for a bolt cutter and a third Technician to a store room for a new bolt. Technicians are often upgraded to serve as Lead Technicians during outages.

During a refueling outage, a Lead Technician will be aware of the skills and experience of employees who have been on his team and will assign them accordingly, but he may also have contract employees on his team with whom he is not familiar. The Lead Technician determines where to place those contract employees based on his observations of their performance.

Other Responsibilities

Some Lead Technicians are responsible for more than one team. They may reassign a Technician from one team to another to complete a task or may request additional help as needed from Supervisors. If the Supervisor is absent, they can obtain the help and notify the Supervisor later. According to the I&C Manager at Limerick, Lead Technicians can shift Technicians from one job to another such as when a Lead Technician pulled Technicians off a diesel outage to assist in handling an emergent toxic gas issue.[12] According to certain Lead Technicians, however, they are generally not allowed simply to stop a job and reassign team members without involvement of their Supervisors and/or the Work Week Manager, because these changes can slow down the work and jeopardize accomplishment of the Employer's goal of completing 93 percent of the scheduled work each week. According to a Peach Bottom LMT, when another team needs help, that team's Supervisor will generally consult with the LMT's Supervisor, and then the LMT and his Supervisor will confer and determine whether they can spare team members. However, there are occasions when the LMT is asked by another team directly for employee assistance when his Supervisor is not present, and he has the authority to accommodate the request and notify his Supervisor later.[13]

When jobs are completed, Lead Technicians examine the work packages submitted by the Technicians to validate that all the sections of the work order or procedure have been

[12] The record does not reflect whether such changes are implemented with or without a Supervisor's input or approval.

[13] The record does not reflect whether such request for assistance come from Supervisors or other Lead Technicians.

completed and signed off before signing them themselves. According to the I&C Manager at Limerick, in reviewing the work packages the Lead I&C Technician looks at the problem description and how the Technician repaired the problem, fills in appropriate codes if they have not already been filled in by the Technician, and instructs the Technician to document the work as needed. He may also tell the Technician to perform necessary work to complete the work package. In Outage Services, some Lead Technicians may personally inspect the work before signing off. After signing off on the work, the Lead Technician will enter "completion remarks" in the computer or check to see that the Technician has done so to enable the removal of clearances. A work order may be closed out or updated as to its current status. At the end of the shift, the Lead Technician issues an end-of-shift status report to the Supervisors, the Project Manager, and the Director by voice mail.

Several Lead Technicians testified that they have never been told that they are supervisors, and one testified that he had been told a few years earlier that he was not a supervisor. However, Lead Technicians have signed timesheets for Technicians in the block noted "Supervisor approval." They have signed the timesheets either on their own or on behalf of their Supervisors as their designees. When Lead I&C Technicians are assigned to an outage, they collect receipts for expenses from the Technicians and fax them to the relevant administrative assistants. They also act as liaisons for hotel reservations for the Technicians.

On evenings and weekends when they do not normally work and no Supervisor is available, Lead Technicians run the crews. This can occur about three times per month depending on the team. It appears, however, that a Supervisor is always on call, known as Emergency Response Duty, should the Lead Technician need to consult him on a problem or to obtain additional staff. The Lead Technicians do not contact the on-call Supervisors very frequently in these situations.

Employee Evaluations

According to an April 2004 job posting in Outage Services, the "Lead Maintenance Technician is responsible for providing input to the Maintenance Technicians' performance evaluations on a regular basis." The Employer has an appraisal program known as Fundamentals Management System (FMS) in which, according to Employer witnesses, Lead Technicians are supposed to enter observations about Technicians that can be used for evaluation and bonus purposes. Employees may be rated on 21 fundamental behavioral and performance standards. No bonuses have been given out thus far under FMS, however. While several Lead Technicians testified that they had never heard of this system, a Technician testified that he had entered data into it a few weeks before the hearing. Prior to FMS, the Employer had another evaluation system known as Performance/Behavior Observation, which some Lead Technicians had used in the past to record data about Technicians on their teams.

Additionally, certain Lead Technicians have been asked by their Supervisors to rate the Technicians on their teams and have participated in group rating sessions. According to Employer witnesses, the Lead Technicians' comments and/or ratings are considered by Supervisors when they are evaluating the employees.

Training

Lead Technicians participate in a two-week classroom training program, which is part of a broader training program completed by the Employer's Supervisors and Managers and contains modules on supervisory and leadership type skills. The Lead Technicians are then supposed to learn various subjects needed for their departments, as well as other areas such as Engineering, Radiological Protection, and Regulatory Assistance. They learn the material on the job and through in-plant meetings with other employees. Supervisors and Managers who meet with the Lead Technicians are required to sign off on areas mastered by the Lead Technicians in their Qualification Books. While this training is supposed to occur shortly after an employee becomes a Lead Technician, some of them were not given the training until several years after they were hired. A Lead Technician does not have to requalify each year on any specialties to remain a Lead Technician, but in order to remain qualified in those specialties, a Lead Technician must undergo the particular requalification process associated with that specialty.

Rewards

While witnesses presented by the Employer testified that Lead Technicians had authority to reward team members by letting them go home early and buying them pizza lunches, Lead Technician witnesses called by the Petitioner denied having such authority. Similarly, while certain witnesses testified that Lead Technicians had authority to spend the Employer's money beyond ordering materials through the PIMS computer work ordering system,[14] and to use company credit cards, other witnesses testified that they had no company credit cards and could not spend the Employer's money beyond PIMS.

B. Analysis

I find that the Employer has established that Lead Technicians are supervisors within the meaning of the Act because they assign work to members of their teams and responsibly direct them using independent judgment. Thus, I conclude that they should be excluded from the unit.

Assignment

Lead Technicians are heavily involved in the long-term planning of work along with the Work Week Manager and Supervisors, to ensure that work packages can be performed efficiently by their teams. In this process, Lead Technicians decide which members of their teams will perform specific functions by considering the skills and qualifications of their team members, their availability, the priority of work assignments, and available training opportunities. They take into account whether team members are good workers, how well they work with other specific individuals, how experienced they are on particular jobs, and how efficient they are in performing certain jobs. With only one Supervisor per team and 10 to 15 Technicians performing various tasks, the Lead Technicians are given primary responsibility for assigning the work to the team members. On a daily basis, they usually arrive before their team

[14] While not specifically defined on the record, the PIMS system appears to be an internal computerized work order system by which employees are able to order supplies. An employee can attach requests for parts to specific work orders or use a general purpose work order for large orders.

members and adjust their work assignments based on call-outs and emergent work, and while their Supervisors may change any assignment, the record reflects that they do not usually do so. Significantly, Lead Technicians may move Technicians between assignments as circumstances require, such as the need to deal with a toxic gas problem. At times, Lead Technicians are in charge of contract employees and must judge their ability based on observations of their performance.

The Board has held that to the extent that assignments are based on assessments of the employees' relative skills, such assignments require independent judgment and therefore are supervisory. *Franklin Hospital Medical Center,* 337 NLRB 826, 830 (2002). Assigning work to employees based on such criteria as employee skill, personality, experience level, and training opportunities evidences the type of independent judgment required by the Board to establish supervisory assignment authority. See *Mays Electric Co., Inc*., 343 NLRB No. 20, slip op. at 6-8 (2004); *Juniper Industries*, supra, 311 NLRB at 111 (1993). Moreover, the highly skilled nature of much of the maintenance work performed by the Technicians in these nuclear power plants supports the conclusion that the Lead Technicians' assignments of work to the Technicians are more than routine in nature. I therefore find that the Lead Technicians have the authority to assign work within the meaning of Section 2(11) of the Act.

Responsible Direction

The record also reflects that the Lead Technicians direct the work of their team members by serving as a primary resource for them, observing their work, offering them guidance and coaching, and responding to their questions. There are often several ways to perform jobs, and Lead Technicians oversee the work and instruct team members on the best way to do it. They also may reassign team members to other teams as needed. When a work package is completed by a team member, the Lead Technician is required to make sure that the work has been properly completed, sign off on it, and ensure that completion remarks have been correctly entered into the computer and clearances removed. If the work package or surveillance test is not adequately documented by the Technician, the Lead Technician can tell him to correct the paperwork or perform whatever other function is required to close out the work properly. Thereafter, the Lead Technician enters this information into the computer or assures that the Technician has done so. Finally, at the end of the day, the Lead Technician reports on the status of work and the shift to upper management. Thus, Lead Technicians are responsible for ensuring that the work of Technicians has been properly completed and documented. Based on this authority and these responsibilities, I find that the Lead Technicians' direction of the Technicians is more than clerical or ministerial in nature and constitutes the type of responsible direction required by the Board to establish supervisory status. In this connection, it bears emphasis that nuclear power plants are uniquely hazardous, and serious consequences may attach to incorrect decisions by Lead Technicians. See *American Commercial Barge Line, Inc*., 337 NLRB 1070 (2002); *McClatchy Newspapers, Inc*., 307 NLRB 773, 779 (1992); *Maine Yankee Atomic Power Co. v. NLRB*, 624 F.2d 347 (1st Cir. 1980). In these circumstances, the Lead Technicians have significant authority over their team members' work and they meet the test for responsible direction under Section 2(11) of the Act.

Evaluations, Rewards, and Secondary Indicia

Lead Technicians are expected to provide ratings and comments for the Technicians on their teams, which the Employer may use in evaluating Technicians. However, the record does not establish that these ratings result in rewards for employees or otherwise affect their employment status. Moreover, some Lead Technicians are unaware of the FMS system, and data can be inputted by non-supervisory Technicians. Thus, such conduct cannot be relied upon to establish supervisory status. *Williamette Industries, Inc.*, 336 NLRB 743-744 (2001); *Bakersfield Californian,* 316 NLRB 1211, 1219 (1995).

Similarly, while the Employer contends that Lead Technicians have the authority to spend money beyond the PIMS system, reward employees by letting them go home early, and give them pizza lunches, the record evidence was in conflict on these matters. Where the evidence is in conflict on particular indicia of supervisory authority, the Board will not find that supervisory status has been established on the basis of these indicia. *Phelps Community Medical Center,* supra, 295 NLRB at 490.

Some secondary factors do support a finding of supervisory status, however. Thus, the ratio of supervisors to employees is one Supervisor to one to three Lead Technicians and 10 to 15 Technicians, and if the Lead Technicians were not found to be supervisors, the ratio of supervisors to non-supervisors on the teams might be too low for such a complex and dangerous type of work. Additionally, the Lead Technicians share a great deal of training with supervisors and regularly attend management meetings to plan work. On the other hand, Lead Technicians are paid on the same non-PSM pay scale as the Technicians.

Conclusion

I find that the Employer has satisfied its burden of proving that Lead Technicians employed by the Employer are supervisors within the meaning of Section 2(11) of the Act because they assign work to their team members and responsibly direct them using independent judgment. Thus, I conclude that they should be excluded from the unit. See e.g. *Mays Electric*, supra; *Arlington Masonry Supply, Inc*. 339 NLRB 817 (2003); *American Commercial Barge Line Company*, supra.[15]

[15] In *PECO Energy Company* 322 NLRB 1074, 1082-1083 (1997), the Board found that Lead Technicians were not supervisors within the meaning of the Act. These employees worked for the Employer's predecessor in operating the Limerick and Peach Bottom plants. Unlike in this case, however, in *PECO*, there was no indication that the Lead Technicians had the authority to assign work based on their assessment of the skills and experience of the Technicians. The hearing in *PECO* was held in 1995, and duties and responsibilities appear to have changed since then, as they now have greater authority to assign work. Additionally, in PECO the Board relied in part on the fact that the Lead Technicians' direction of employee work was a product of their greater skill and experience, but in *Kentucky River,* the Court expressly rejected this reasoning.

IV. REACTOR OPERATORS

A. Facts

Most of the Reactor Operators at the Peach Bottom and Limerick plants work in Shift Operations in the Control Rooms. In each Control Room are controls and indicators for all key reactor parameters. The Reactor Operators monitor operations, manipulate the equipment from the Control Room, and respond to numerous types of alarms for equipment problems and malfunctions. They are charged with operating the plant in accordance with approved procedures to ensure that the reactors are operated in a safe, conservative, and efficient manner at all times. Reactor Operators have the authority to shut down a reactor when they determine that its safety is in jeopardy or when operating parameters exceed reactor protection circuit set points and automatic shutdown does not occur.

Unit Reactor Operators

The two Unit Reactor Operators (UROs) at both plants each have their own sets of panels at primary consoles. Each URO is at the controls for that particular reactor and must monitor the reactor and ensure that reactor operation remains within established bands. They also must also monitor all assigned Control Room panels and notify the Control Room Supervisor regarding unusual or unexpected conditions.

The URO must be cognizant of the activities impacting the reactor, including all routine tests on equipment and surveillance tests. Alarms are associated with the performance of various tests, and the URO must be aware of them and have the tests performed when they will not interfere with other operations or the performance of the unit. The UROs may discuss with Equipment Operators the timing of any tests which may impact on their units and may reschedule them to more convenient times. While the URO can reroute the performance of tests, in doing so he must consult with higher management because the Employer's entire work process and scheduling is affected by these actions.

When tests are performed, UROs communicate with Equipment Operators regarding the various steps being taken. With respect to certain activities such as maintaining correct pressure levels in the unit, the URO may communicate with the Equipment Operator several times per day asking him to perform certain actions or manipulations needed to assure safe operation of the reactor.

The UROs respond to many types of alarms consistent with written Alarm Response Card (ARC) procedures, but there are occasions when the procedures do not cover all contingencies, and the URO uses his judgment and training to remedy the problems.[16] When the procedures cover the problem, the URO may dispatch the assigned Equipment Operator to

[16] ARC procedures are written procedures that are required to be used whenever alarms go off in the control room or elsewhere in the facilities.

examine a condition or system in the field or tell him to take a certain action to remedy the problem consistent with the specific ARC procedures. When ARC procedures do not identify what action the URO should take, he usually seeks input from his Supervisor.

Plant Reactor Operators

The Plant Reactor Operator (PRO) is the Reactor Operator responsible for the common systems within the Control Room, such as electrical boards and emergency services. He sits in the center of the Control Room with access to common equipment for both units and monitors slightly fewer systems than the UROs. The Control Room Supervisor is also seated in this area. The PRO acts as an interface for all scheduled work, allowing the UROs to focus on panel monitoring.

When the PRO arrives at work, he relieves his counterpart from the previous shift, reviews the common equipment deficiency list and the log from the previous shift, and performs a Control Room "walk down." He then locates on his computer the "people paper," which is prepared by the Work Control Supervisor and lists all of the scheduled work tasks and available employees, including the shift's Reactor Operators and Equipment Operators. At this point, Equipment Operators have already been assigned to their respective rotational positions. These positions include Rad (Radiation) Waste Operator Inside, Rad Waste Operator Outside, Unit 1 Reactor, Unit 1 Turbine, Unit 2 Reactor, and Unit 2 Turbine. Several extra Equipment Operators serve as Floaters and may be assigned by the PRO where needed. Additionally, specific employees have been assigned to perform the safe shutdown procedure for each of the units, as well as to serve on, and be the leader of, the fire brigade. Certain assignment restrictions are listed at the bottom of the people paper.[17] In addition to jobs performed by the Equipment Operators, the document also sets forth certain jobs customarily performed by the PRO and the UROs.

Within these parameters and restrictions, the PRO assigns Equipment Operators to specific tasks that best fit their rotational assignments and location. For example, when the PRO sees the people paper, the Work Control Supervisor has already assigned an Equipment Operator to the job of Safe Shutdown 2. The PRO then will assign the Reactor Operators and Equipment Operators to tasks such as Unit 1 "Jet Pump Operability Verification." If independent verification of a test is required, he will assign more than one employee. Even though every Equipment Operator is qualified to perform all work on the shift, the PRO may assign a less experienced employee to work with another employee as a learning experience if he has an extra person available. Additionally, a PRO may assign a Floater experienced in a certain area to assist a fellow Equipment Operator having a problem with equipment in that area.

One Reactor Operator testified, however, that she does not always assign Equipment Operators to jobs by name. Rather, at times she simply writes "EO" on the form next to certain tasks and leaves it up to the Field Supervisor to determine which Equipment Operator should perform them. The record does not indicate how many other Reactor Operators, if any, assign Equipment Operators in this manner.

[17] For example, a Fire Brigade employee may not be a Safe Shutdown employee, and a Shift Technical Advisor cannot be a Fire Brigade Leader or a Safe Shutdown employee.

The daily shift meeting is run by the Shift Supervisors and the Work Control Supervisor. The Work Control Supervisor announces the assignments at the start of the meeting, and the Field Supervisor announces which jobs he will be supervising directly in the field that day. The completed people paper is distributed to all team members, but it may be changed by the Field Supervisor if he has additional tasks he needs performed, or by the Work Control Supervisor if there is needed emergency work.

The Work Control Supervisor reviews the work packages, verifies that they are on the schedule, and certifies that plant conditions are acceptable for performing the tasks before turning them over to the PRO. The PRO, the Fourth Reactor Operator, or the Field Supervisor can distribute work packages to Equipment Operators immediately after the shift meeting, but certain clearances may be picked up later in the shift. Before the work is to be performed, there is a briefing where the employees review the work to be done. Either the PRO or an Equipment Operator may present the briefing.

If an Equipment Operator encounters a problem on the floor, he can go to another Equipment Operator or call the Control Room and contact the PRO for assistance. The PRO is not allowed to leave the Control Room, and he would likely consult the Field Supervisor in situations which could not be easily resolved by telephone.

When an Equipment Operator completes a surveillance test or a routine test, the PRO reviews the documents to make sure the test was completed and everything was logged properly. He then signs a document acknowledging that the testing process is complete. The PRO does not personally go into the field to check that a test has been done.

The Fourth Reactor Operator fills in as needed among the rotating URO and PRO positions.

Clearance Writers

Reactor Operators rotate into positions as Clearance Writers for two years and then return to the Control Room. Clearance Writer assignments are voluntary, and some Reactor Operators have never held this position. The Clearance Writers work with the Work Week Manager and Maintenance Supervisors by designing and preparing specific clearances required to put the equipment in a non-operating safe condition so that planned work can be performed. This full-time assignment requires the Clearance Writers to prepare detailed written instructions on how to de-energize equipment. A clearance writing manual provides guidance for the Clearance Writers. Clearances may take less than a day or more than a week to write and include recommendations on the manpower needed to perform them. A Supervisor must review and authorize clearances to ensure compliance with technical specifications. Once written and authorized, clearances are put into the work packages given to Equipment Operators, but if the Equipment Operator observes a problem with the clearance, it may be sent back and amended.

Training and bonuses

Many Reactor Operators formerly served as Equipment Operators. To become licensed Reactor Operators, they receive 12 to 18 months of additional technical training. Once a shift team is established with Senior Reactor Operators, Reactor Operators, and Equipment Operators, these employees train together every fifth week on a simulator. The Equipment Operators on the team attend their own training sessions at the same time every fifth week.

As non-PSM employees, Reactor Operators and Equipment Operators are eligible for the same annual bonuses based on plant and company performance. If an employee does not maintain a certain level of proficiency, however, he does not receive the bonus. While Reactor Operators and Senior Reactor Operators receive yearly licensing bonuses when they pass their requalification tests, Equipment Operators also receive a bonus if they score 90 percent or better on an annual test.

B. Analysis

I find that the Employer has failed to establish that its Reactor Operators are supervisors within the meaning of Section 2(11) of the Act. In summary, while Reactor Operators play a role in assigning daily tasks to Equipment Operators on their shift teams during the 25 percent of the time when they rotate into the PRO position, these task assignments do not generally require independent judgment. Similarly, while I find that the Reactor Operators interact with Equipment Operators at various times during their shift, their direction of employees is severely circumscribed by written procedures and shift supervision and thus does not constitute responsible direction.

Assignment of Work

Reactor Operators work on shift teams composed of a Shift Manager, three to four Shift Supervisors, four Reactor Operators, and about ten Equipment Operators. The Work Week Manager is responsible for planning what work to perform and which staff members will perform the work each day consistent with specific rotational assignments. When the PRO on the shift sees the people paper each morning, it already contains the rotational assignments of all Reactor Operators and Equipment Operators on the shift, including which Equipment Operators are assigned to act as Floaters. Prior to the start-of-shift meeting, the PRO simply matches the named employees on the sheet to various tasks consistent with their rotational assignments and other restrictions set forth in the document. The PRO regularly works on a shift with relatively few Equipment Operators, and he is able to make assignments based on his familiarity with the known skills and experience levels of the Equipment Operators on the team. Moreover, his assignments are subject to change by both the Work Control Supervisor and the Field Supervisor. At least one Reactor Operator does not even indicate which Equipment Operator will perform which task but simply writes “EO” on the form. While all Equipment Operators are qualified to perform all of the listed jobs, the PRO may assign a Floater to work with an assigned Equipment Operator as a learning opportunity if he has enough staff available to do so. This minimal use of discretion does not rise to the level of “independent judgment.”

Assigning tasks based on well known differing abilities among employees does not make an employee a supervisor. *Hausner Hard-Chrome of KY, Inc.* 326 NLRB 426, 427 n. 7 (1998). This is particularly so in this case, where the work to be performed has already been decided by the Work Week Manager, the PRO is limited by additional restrictions, and supervisors can and do make changes to those assignments. See *Arizona Public Service Company*, 310 NLRB 477, 480 (1993).

Responsible Direction

While a Reactor Operator may direct an Equipment Operator to assist another Equipment Operator or check or make adjustments to equipment during normal operations or a startup, these actions are taken in the context of the Employer's detailed written instructions, the Reactor Operator's duty to keep the Shift Supervisors continuously informed of plant conditions, and the locations of the Equipment Operators. Further, the Reactor Operator is limited regarding the prioritization and execution of work because any changes to the schedule can affect the Employer's overall work completion goals. Such limited discretion does not amount to direction exercised with independent judgment. *Volair Contractors, Inc*., 341 NLRB No. 98, slip op. at 3 (2004); *Ferguson Electric Co.,* 335 NLRB 142, 147 (2001); *Arizona Public Service Company*, supra at 481. Rather, in comparison to the discretion exercised by Lead Technicians, the Reactor Operators' instructions to other employees are more circumscribed by written procedures and by supervisory oversight.

Clearance Writing

I also find that the rotation of Reactor Operators into the position of Clearance Writer does not make them supervisors within the meaning of the Act because the record does not establish that they assign work to specific employees or responsibly direct them when they create clearances. Rather, they simply write the specific steps needed to de-energize equipment so that other work can be performed. The fact that they include manpower estimates for the various steps of the clearance does not establish that they are involved in assigning or directing any particular employee. Further, the fact that they may be engaged in complex and/or skilled work like the Reactor Operators in the Control Room does not in and of itself make them supervisors of employees when they do not possess any Section 2(11) indicia of supervisory status. See *Unit Rig & Equipment Co.,* 251 NLRB 359, 361 (1980), enfd. 114 LRRM 2880 (10th Cir. 1982) (dispatchers important in overall scheme of complex manufacturing setting but not supervisors since no 2(11) indicia).

Secondary Indicia

While secondary indicia of supervisory authority may lend support to a conclusion regarding supervisory status, they do not themselves establish supervisory status. *McClatchy Newspapers*, 307 NLRB 773 (1992). In this case, moreover, the secondary indicium of a disproportionately high ratio of supervisors to employees supports the conclusion that the Reactor Operators are not supervisors. Id. There are four admitted supervisors, and one of them, the Field Supervisor, works out in the field directly supervising the work of the 10 or so Equipment Operators, while the Reactor Operators generally do not leave the Control Room.

See *Arizona Public Service Co*., supra at 481 (the fact that four purported supervisors in the control room, including reactor operators, supervised six operator employees, supported conclusion that reactor operators were not supervisors). Additionally, the Reactor Operators are subject to the same non-PSM pay scale as the Employer's non-supervisory employees.

Unlike the Equipment Operators, the Reactor Operators are licensed by the Nuclear Regulatory Commission, and the Reactor Operators regularly participate with Senior Reactor Operators in some common training. These secondary factors would tend to support a supervisory finding, but they do not establish the supervisory status of Reactor Operators where the Employer has failed to establish the existence of any primary statutory indicia of supervisory status. *Ken-Crest Services*, 335 NLRB 777, 779 (2001); *Juniper Industries, Inc*., supra at 110 (1993).

Conclusion

Based on the foregoing, I find that the Employer has not satisfied its burden of proving that the petitioned-for Reactor Operators possess any indicia of supervisory authority set forth in Section 2(11) of the Act.

V. CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and for the reasons set forth above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.

3. The Petitioner claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time Designers, HP Technicians, I&C Technicians, Chemistry Technicians, Equipment Operators, Reactor Operators, Maintenance Technicians, Utility Technicians, Material Coordinators, Quality Verification Technicians, NDE Technicians, plant clericals at Limerick Nuclear Generating Station (Chemistry: Administrative Clerk; Operations: Administrative Clerks; Radiation Protection: Administrative Clerk; Maintenance: Technical Clerk, Administrative Coordinator; Maintenance

Planning: Administrative Coordinator; I&C: Administrative Coordinator; Business Operations: Administrative Clerks), and plant clericals at Peach Bottom Atomic Generating Station (Chemistry: Administrative Coordinator; Operations: Technical Clerk, Administrative Coordinator; Radiation Protection: Technical Clerk; Maintenance: Administrative Coordinator; Maintenance Planning: Administrative Coordinator; I&C: Administrative Coordinator; Business Operations: Technical Clerks), employed by the Employer at Peach Bottom Atomic Generating Station, Limerick Nuclear Generating Station and Outage Services (East), **excluding** all other employees, Lead Technicians, all other Administrative Clerks, Administrative Coordinators, Senior Administrative Coordinators and Executive Coordinators, Planners, all employees in exempt pay classifications, and all employees in the Security, Training, Regulatory Assurance, Nuclear Oversight and Human Resources Departments, office clerical employees, guards and supervisors as defined by the Act.

VI. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for the purposes of collective bargaining by the **International Brotherhood of Electrical Workers, AFL-CIO, on behalf of IBEW Local Union 614.** The date, time, and place of the election will be specified in the Notice of Election that the Board's Regional Office will issue subsequent to this Decision.

A. Eligible Voters

The eligible voters shall be unit employees employed during the designated payroll period for eligibility, including employees who did not work during that period because they were ill, on vacation, or were temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, employees engaged in an economic strike, which commenced less than 12 months before the election date, who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Employees who are otherwise eligible but who are in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are: 1) employees who have quit or been discharged for cause after the designated payroll period for eligibility; 2) employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date; and 3) employees engaged in an economic strike which began more than 12 months before the election date who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman–Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within seven **(7)** days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the ***full*** names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, One Independence Mall, 615 Chestnut Street, Seventh Floor, Philadelphia, Pennsylvania 19106 on or before **April 7, 2005**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (215) 597–7658, or by e-mail to Region4@NLRB.gov.[18] Since the list will be made available to all parties to the election, please furnish a total of two **(2)** copies, unless the list is submitted by facsimile or e-mail, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of three **(3)** working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least five **(5)** working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on non-posting of the election notice.

[18] See OM 05-30, dated January 12, 2005, for a detailed explanation of requirements which must be met when electronically submitting representation case documents to the Board, or to a Region's electronic mailbox. OM 05-30 is available on the Agency's website at www.nlrb.gov.

VII. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, D.C. 20570-0001. A request for review may also be submitted by e-mail. For details on how to file a request for review by e-mail, see http://gpea.NLRB.gov/. This request must be received by the Board in Washington by 5:00 p.m., EDT on **April 14, 2005.**

Signed: March 31, 2005

at Philadelphia, Pennsylvania

/s/ [Dorothy L. Moore-Duncan]
DOROTHY L. MOORE-DUNCAN
Regional Director, Region Four